UNITED NATIONS

LOS

UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

Distr.
LIMITED

LOS/PCN/SCN.4/L.17
26 January 1994

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY
AND THE INTERNATIONAL TRIBUNAL
FOR THE LAW OF THE SEA
Special Commission 4

CHAIRMAN'S SUMMARY OF DISCUSSIONS

Principles governing a relationship arrangement between the International Tribunal for the Law of the Sea and the International Seabed Authority
(LOS/PCN/SCN.4/WP.10)

1. During the summer meetings of the eighth session of the Preparatory Commission, at its 124th and 125th meetings, Special Commission 4 considered a working paper prepared by the Secretariat entitled "Principles governing a relationship arrangement between the International Tribunal for the Law of the Sea and the International Seabed Authority" (LOS/PCN/SCN.4/WP.10).

Introduction of the working paper

2. In introducing the working paper, the Secretary said that the paper should be considered in the context of precedents, primarily Article 57 of the Charter of the United Nations, and existing relationship arrangements. However, since the current arrangement was different from those envisaged in Article 57, it had been necessary to spell out some of the issues. The paper did not attempt to reach any conclusions, but rather attempted to explain the functions of the International Tribunal for the Law of the Sea and the International Seabed Authority as they related to each other. The working paper did not, however, cover every case where a relationship might have to be regulated. The traditional practice of entering into a relationship arrangement for a specific purpose was not applicable in this case. No attempt had been made to formulate texts. The document only highlighted the types of issues that could be covered.

General comments on the working paper

3. The question was raised as to whether there was a precedent empowering two organs created by the same convention to conclude a further agreement between themselves. While it was felt by several delegations that an agreement could be concluded, doubts were expressed over whether it was really needed and it was

pointed out that the Commission would need to take a decision on the question. One delegation said that if there were to be any cooperation then this should only relate to administrative matters, and even then there was no need for an agreement. It was felt that the independence of the Tribunal should be maintained at all costs and that it should not be influenced in its decision-making. Another delegation noted that, since the Tribunal and the Authority were completely independent and the United Nations Convention on the Law of the Sea did not say how they were connected, an agreement was needed to establish a link between them.

4. It was pointed out that, since the Tribunal and the Authority had been established by the same Convention, there was no need for the working paper to deal with issues which had already been provided for in the Convention; mere repetition of the provisions of the Convention should be avoided. One delegation disagreed, noting that what the Commission was considering at the current stage were principles and not draft articles.

Comments on specific sections

Section I. Preamble

5. It was pointed out that the comments on the preamble of working paper 9, entitled "Draft Agreement on Cooperation and Relationships between the United Nations and the International Tribunal for the Law of the Sea" (LOS/PCN/SCN.4/WP.9), would also apply to the preamble of the working paper currently under consideration.

6. One delegation noted that the Tribunal was not an international organization in the normal sense and that one could not therefore say that the agreement was between two organizations.

7. The view was expressed that paragraphs 1 and 2 should be reversed, while a contrary view held that the preamble should first state the objective of the agreement, as contained in paragraph 1. With regard to paragraph 3, it was pointed out that reference should be made to the objectives of the Convention instead of the preamble to the Convention.

Section II. Governing principles and mutual recognition of responsibilities, rights and obligations

8. Some delegations pointed out that the Tribunal was not a judicial "organ" but a judicial "body" or "institution" and that it should be referred to as such.

9. The need to provide for mutual recognition was questioned by some delegations, since the Tribunal and the Authority had been created by the same Convention. One delegation thought that it was the Tribunal's ability to conclude agreements which should be elaborated on.

Section III. Consultation, cooperation, coordination and recommendations

10. Several delegations felt that in a follow-up paper, section III should not be drafted in such detail, but rather be reduced to areas where there was a precise statement of the need for cooperation in accordance with the provisions of the Convention. The Tribunal and the Authority should be left to work out the details of cooperation and coordination at a later stage. The Special Commission should avoid giving the impression that it was creating a large bureaucratic structure.

11. Some delegations emphasized that the Tribunal, as an independent judicial body which could pass judgement on the actions and activities of the Authority, should not be influenced by the Authority. Thus one delegation did not think that the Tribunal should cooperate and consult with the Authority; while another said that care should be taken with the provision in paragraph 5 which called for regular consultations to ensure that the Tribunal would not be influenced by the Authority. That delegation also opposed any influence on the staff by either the Tribunal or the Authority.

12. One delegation considered paragraph 5 ambiguous enough to allow for any type of arrangement. Clarification was sought by another delegation as to the meaning of the last sentence. The Secretary explained that the essence of a relationship arrangement was that one organization could facilitate the activities of the other and that the last sentence was intended to provide for such a situation. Without a cooperation arrangement the Tribunal would not be able to get technical advice, support or assistance when dealing with highly technical matters. This type of cooperation would entail minimal financial implications.

13. Some delegations pointed out that some paragraphs in Section III merely repeated the provisions of the Convention and were thus not very useful. One delegation expressed support for the retention of paragraphs 9, 11 and 12, but believed that paragraph 12, which dealt with information, should be moved to section IV. Another delegation was of the opinion that some of the issues in section III, especially in paragraph 12, could be dealt with in the Rules of the Tribunal.

Section IV. Exchange of information and documents

14. It was pointed out by one delegation that the exchange of information and documents might not require even administrative regulations, but that it would be in the interest of the Tribunal and Authority to do so without resorting to an agreement. Some delegations were of the view that the Tribunal should not furnish special reports to the Authority, leaving the Registry overloaded with work. While not opposed to the principle of exchange of information and recognizing that the Tribunal and the International Court of Justice might need to exchange information and documents, one delegation could not conceive what type of information the Tribunal could present to the Authority, and therefore thought that section IV should be deleted. He said that there was both too much and too little in paragraph 13 Another delegation believed that the exchange of information should be limited to administrative matters, because information

regarding pending cases could result in the Tribunal being influenced by the Authority. It was noted that the Authority was political in nature whilst the Tribunal was purely judiciary and that the independence of the Members had to be maintained.

15. With regard to paragraphs 14 to 16, one delegation found it hard to understand why paragraph 14 had been included in the document, since advance information could not be given in an emergency situation. Support was expressed by that delegation for the retention of paragraphs 15 and 16. Another delegation considered paragraph 16 unacceptable on the ground that the Authority should not receive preferential treatment before the Tribunal; questions, other than seabed mining, such as those involving fishing, pollution, etc., were of equal economic importance.

Section V. Reports

16. Several delegations saw no need for a separate section on reports and proposed that they be dealt with under section IV on exchange of information and documents. One delegation believed that section V contradicted the idea of the independence of the Tribunal.

17. One delegation said that the first sentence of paragraph 18 lacked clarity. With respect to the second sentence of paragraph 18, it was pointed out by some delegations that there was no need for the Tribunal to report to the Authority on its jurisprudence. The annual report of the Tribunal would be distributed to all members and the Authority could review the jurisprudence of the Tribunal on its own. The Tribunal had an independent personality on which the Authority should not exert any influence. One delegation suggested replacing the word "review", which had a legal implication, with the words "acquaint itself". Another delegation was of the view that the second sentence had no basis in the Convention and should therefore be deleted. The rendering of an advisory opinion was limited to the Seabed Disputes Chamber.

18. Some delegations did not think that the hypothesis presented in paragraph 19 should be regulated in that paragraph, but believed that practice would resolve the problem. One delegation held the view that the amendment process referred to in paragraph 19 called for cooperation rather than reports and that it should therefore be considered under section III. Another delegation was of the opinion that it should be considered under section IV and that thought should be given as to whether a procedure needed to be established.

Section VI. Administrative cooperation and personnel arrangements

19. One delegation expressed doubts about the usefulness of paragraph 20, and another noted that its provisions should not be automatic given the fact that the Tribunal and the Authority both had their own juridical personality and thus could choose to establish a relationship for administrative cooperation and personnel arrangements. Some delegations pointed out that the draft agreements between the United Nations and the Authority and the United Nations and the Tribunal already established a link with the International Civil Service Commission (ICSC) and that there was thus no need to mention such a link in the

working paper under consideration and repeat provisions already included in those earlier agreements. One delegation said that the cooperation envisaged in paragraph 20 should only take place if either the Tribunal or the Authority decided not to have a relationship with ICSC, while another delegation believed that the Tribunal and the Authority should cooperate in any event to ensure uniformity regarding conditions and terms of service, levels of salary, etc.

20. With respect to paragraph 21, it was noted that the Secretariat had given many possibilities but no solution. While one delegation considered the Seabed Disputes Chamber to be the appropriate forum to address issues raised under article 168, paragraph 3, of the Convention, another believed that it was not. Misgivings were expressed about having the Tribunal act as the court of first instance in disputes involving the Authority and its staff. One delegation said that the Commission should not express itself on a contentious issue such as the Authority's mechanism of choice for dispute settlement. Support was expressed by another delegation for the retention of paragraph 21.

Section VII. Budgetary and financial arrangements

21. Some delegations noted that the words "close budgetary and financial relationships" in paragraph 22 required clarification, since they could be interpreted to mean that the Authority and the Tribunal were financially dependent upon each other. One delegation questioned the need for such a close relationship and suggested that section VII should only contain a provision on how the contribution by the Authority to the Tribunal's budget would be made. In that connection, it was noted that a sounder mechanism than consultation was needed to determine the level and method of payment of the Authority's contribution to the Tribunal's budget.

22. It was pointed out by one delegation that while article 19, paragraph 1, of the Statute provided for the contribution to the costs of the Tribunal by the Authority, that relationship should not prejudice the independence of the Tribunal, e.g., the Authority should not be allowed to restrict its contributions to the Tribunal's budget when it was dissatisfied with the latter's judgements.

Section VIII. General

23. Supporting what was stated in the last sentence of paragraph 24, namely that "most of the instances cited in the present paper could be brought under a single broad definition of cooperation, consultation and exchange of information", some delegations saw no need for detailed consideration of the issues as currently contained in the working paper.